

FCC MAIL SECTION

Federal Communications Commission

DA 99-712

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DISPATCHED
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-154
Table of Allotments,)	RM-9174
FM Broadcast Stations.)	RM-9394
(Kosciusko, Goodman and Decatur)	
Mississippi) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 7, 1999

Released: April 16, 1999

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making, 63 FR 46978, published September 3, 1998, issued in response to a petition for rule making filed on behalf of Rainey Broadcasting, Inc. ("petitioner"), permittee of Station WZKR(FM), Channel 277C3, Kosciusko, Mississippi, proposing the reallocation of Channel 277C3 from Kosciusko to Goodman, Mississippi, as the latter community's first local aural transmission service and modification of its authorization accordingly. Petitioner filed comments containing a counterproposal.² No other comments were received.

2. As stated in the Notice, petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Modification"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

3. In its comments petitioner counterproposed the reallocation of Channel 277C3 from Kosciusko to Decatur, Mississippi, instead of Goodman, Mississippi, as originally proposed, and modification of its authorization accordingly. In support of its request, petitioner advises that although its original request would have provided Goodman with its first local service and enabled it to combine its radio operations in the Goodman area with another station it owned in nearby Pickins, Mississippi, the Pickins station has been sold. Therefore, petitioner avers that the benefits of consolidated operations at the Goodman location are no longer a

¹The community of Decatur, Mississippi, has been added to the caption.

²Public Notice of the counterproposal was given November 3, 1998, (Report No. 2304) and assigned rule making number RM-9394.

consideration. As a result, petitioner has withdrawn its proposal to reallocate Channel 277C3 to Goodman, opting instead to provide a first local service to Decatur, Mississippi.³

4. In further support of its reallocation request, petitioner advises that Decatur is not located in or near an urbanized area. Moreover, petitioner reports that Decatur has its own local government, as well as its own police and fire departments. Water, sewer and garbage services are provided to the residents by the Town of Decatur. The community also has a public library, schools, post office (zip code, 39327), recreational facilities, churches, social and civic organizations, a chamber of commerce, numerous businesses, financial institutions, medical facilities and cultural events.

5. Petitioner advises that although it intends to relocate the transmitter for proposed Station WZKR(FM), the requested reallocation to Decatur will not result in a loss of existing service as Channel 277C3 is presently unused at Kosciusko, citing Midway, Panacea and Quincy, Florida, 10 FCC Rcd 6112 (1995); and Douglas, Tifton and Unionville, Georgia, 10 FCC Rcd 7706 (1995). Additionally, petitioner advises that while the reallocation will result in a small net area gain of 46 square kilometers, it will also realize a net gain in population of 52,043 persons. Further, petitioner states that the projected loss area consists of 50,598 persons in an area of 4,757 square kilometers. However, petitioner remarks that Kosciusko residents will continue to receive local service from Stations WJTA(FM), (Channel 219A), WBKJ(FM), Channel 286C1 and WKOZ-AM, while all of the loss area encompassed within Station WZKR(FM)'s projected 60 dBu contour will continue to receive reception service from at least five aural services.

6. In light of the above, we believe the public interest would be served by granting the petitioner's proposal as it will result in a preferential arrangement of allotments as required by the Commission's Modification procedures, supra. Applying those procedures we compare the existing arrangement of allotments with the proposal using the FM allotment priorities contained in the Revision of FM Assignment Policies and Procedures, 90 FCC Rcd 88 (1982) ("Revision").⁴ The first two allotment priorities are not applicable to this proposal. Decatur, which is not within nor adjacent to an urbanized area, will receive its first local aural transmission service (priority 3) and is favored over retaining Channel 277C3 at Kosciusko (priority 4). Additionally, Kosciusko will continue to receive three local transmission services, as indicated supra. Therefore, in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the authorization for Station WZKR(FM) to specify operation on Channel 277C3 at Decatur, Mississippi, in lieu of Kosciusko, Mississippi.

7. Channel 277C3 can be allotted to Decatur, Mississippi, at the petitioner's designated

³Petitioner advises that as it owns other radio stations in Newton County, where Decatur is located, it will still be able to recognize the benefits of consolidated operations if Channel 277C3 is reallocated to Decatur.

⁴The allotment priorities are (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

site located 5.2 kilometers (3.3. miles) south of Decatur at coordinates 32-23-42 NL and 89-05-42 WL, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 1, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Decatur, Mississippi	277C3
Kosciusko, Mississippi	286C1

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of Rainey Broadcasting, Inc. for Station WZKR(FM) (File No. BPH-950525MK), IS MODIFIED to specify operation on Channel 277C3 at Decatur, Mississippi, in lieu of Kosciusko, Mississippi, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(3)(I), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Rainey Broadcasting, Inc., permittee of Station WZKR(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the change in community of license at Decatur, Mississippi.

11. IT IS FURTHER ORDERED, That the petitioner's petition for reconsideration of our

earlier denial of its request for rule making, as discussed in the Notice at footnote 1, has been rendered moot by the action taken herein, and IS HEREBY DISMISSED.

12. IT IS FURTHER ORDERED, That the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Order to the following: Rainey Broadcasting, Inc., 100 22nd Avenue South, Suite A, Meridian, MS 39301.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau